

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ROBERT A. RENNICK

Appellant

v.

STATE OF MISSOURI

Respondent

DOCKET NUMBER WD74719

DATE: March 5, 2013

Appeal From:

Circuit Court of Pettis County, MO
The Honorable Robert Lawrence Koffman, Judge

Appellate Judges:

Division Two
Karen King Mitchell, P.J., Thomas H. Newton, and Lisa White Hardwick, JJ.

Attorneys:

Ellen Flottman, Columbia, MO

Counsel for Appellant

Attorneys:

Evan Buchheim, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

ROBERT A. RENNICK, Appellant, v.
STATE OF MISSOURI, Respondent

WD74719

Pettis County

Before Division Two Judges: Mitchell, P.J., Newton, and Hardwick, JJ.

Rennick was convicted of first-degree statutory rape. We issued our mandate affirming judgment on August 5, 2011. Within ninety days of our mandate, Rennick filed a *pro se* motion for post-conviction relief pursuant to Rule 29.15. On the Criminal Procedure Form 40, where asked to indicate the date of our mandate in his direct appeal, Rennick responded, “[d]o not know.” The trial court dismissed Rennick’s motion, finding that his motion was not timely filed. Rennick appeals.

REVERSED AND REMANDED.

Division Two Holds:

On appeal, Rennick argues that the motion court erred in dismissing the motion for post-conviction relief because it was not untimely. A motion for post-conviction relief pursuant to Rule 29.15 is required to be filed within 90 days after the date of the appellate court’s mandate. Failure to file the motion within Rule 29.15’s timeframe is a fatal defect and results in the complete waiver of any rights or claims under Rule 29.15.

The circuit court clerk’s file stamp reflects that Rennick’s motion was filed within ninety days of the mandate. However, the State contends that dismissal was proper because the motion itself did not show that it was timely filed. Relying on *Dorris v. State*, 360 S.W.3d 260, 267 (Mo. banc 2012), the State argues that Rennick was required to plead facts in the motion demonstrating that the motion was, in fact, timely filed, and that Rennick failed to do so. However, the pleading requirements described in *Dorris* pertained to situations where the record reflects the motion was untimely filed, but exceptional circumstances caused the untimeliness, or the time stamp does not reflect the correct filing time. Here, however, the circuit court’s file stamp shows that Rennick’s motion was timely filed. Although Rennick did not provide the date of the appellate mandate, he provided citation to our order and the date of the mandate was readily ascertainable from our order as well as the certified legal file. To dismiss Rennick’s timely filed motion as untimely based on his failure to report the date that the mandate issued does not serve the purpose of the rule. We reject the State’s contention. Rennick’s point is granted.

For the foregoing reasons, the trial court’s judgment is reversed and remanded.

Opinion by Thomas H. Newton, Presiding Judge

March 5, 2013

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.